

POCATELLO, TUESDAY, MARCH 10, 2008, AT 3:00 P.M.

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 33496

SUSAN J. BEEHLER and ROGER C.)
BEEHLER, husband and wife,)
)
Plaintiffs-Appellants,)
)
v.)
)
FREMONT COUNTY, a political subdivision))
of the State of Idaho, FREMONT COUNTY))
SHERIFF'S DEPARTMENT, and BRIAN))
LOSEKE, an individual,)
)
Defendants-Respondents.)
)

Appeal from the District Court of the Seventh Judicial District, State of Idaho, Fremont County. Hon. Brent J. Moss, District Judge.

M. Patrick Duffin, Ammon, for appellant.

Anderson Nelson Hall Smith PA, Idaho Falls, for respondent.

On February 14, 2004, Susan J. Beehler was arrested for driving under the influence near Island Park, Idaho. Deputy Brian Loseke transported Susan to the Fremont County Sheriff's Office in St. Anthony, Idaho. During the course of this trip, Deputy Loseke stopped the car twice to allow Susan to urinate by the side of the road. The second time Deputy Loseke stopped, he did not remove Susan's handcuffs; she fell due to the icy conditions and injured her knee. Two years later, the Beehlers filed a complaint against Deputy Loseke, Fremont County, and the Fremont County Sheriff's Department, alleging negligence. The Defendants moved to dismiss on the ground that the Beehlers had failed to file a written undertaking as required by Idaho Code § 6-610. After considering oral arguments and briefing by the parties, the district court dismissed the Beehlers's complaint as to all parties for failure to comply with I.C. § 6-610. The Beehlers timely appealed, challenging the applicability of I.C. § 6-610 to claims under the Idaho Tort Claims Act (ITCA), I.C. §§ 6-901 to 6-929.

POCATELLO, MONDAY, MARCH 10, 2008, AT 4:30 P.M.

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 33893

STATE OF IDAHO,)
)
Plaintiff-Respondent,)
)
v.)
)
RAUDEL SALAZAR-GARCIA,)
)
Defendant-Appellant.)
_____)

Appeal from the District Court of the Fifth Judicial District, State of Idaho, Jerome County. Hon. John K. Butler, District Judge.

Fuller Law Offices, Twin Falls, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Thomas Tharp, Deputy Attorney General, Boise, for respondent.

Raudel Salazar-Garcia pleaded guilty to grand theft for stealing a day-old Holstein calf from the dairy where he was employed. The grand theft statute, Idaho Code § 18-2407(1)(b)(7), provides that a grand theft occurs when a person commits the theft of “livestock or any other animal exceeding one hundred fifty dollars (\$150) in value.” As this Court has interpreted this statute, the monetary element is applicable to both “livestock” and other animals; thus, to be grand theft, the calf’s value had to exceed \$150. *State v. Morrison*, 143 Idaho 459, 147 P.3d 91 (Ct. App. 2006). A police report indicated that the value of the calf was *precisely* \$150. Salazar-Garcia filed a motion to withdraw his guilty plea because he was not informed, before pleading guilty, that the value of the calf was an element of the crime. He also argued that he was ineffectively advised by counsel, who either did not realize that the monetary element applied, or who thought that the issue was immaterial because the calf was worth \$150. The district court denied Salazar-Garcia’s motion to withdraw his plea, and Salazar-Garcia appeals.

POCATELLO, TUESDAY, MARCH 11, 2008, AT 9:00 A.M.

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 33725

IN THE MATTER OF THE DRIVER'S)
LICENSE SUSPENSION OF FRANK)
ALBERT ARCHER.)
<hr/>)
FRANK ALBERT ARCHER,)
)
Petitioner-Respondent,)
)
v.)
)
STATE OF IDAHO, DEPARTMENT OF)
TRANSPORTATION,)
)
Respondent-Appellant.)
<hr/>)

Appeal from the District Court of the Sixth Judicial District, State of Idaho, Bannock County. Hon. Peter D. McDermott, District Judge.

Hon. Lawrence G. Wasden, Attorney General; J. Tim Thomas, Deputy Attorney General, Boise, for respondent.

McDermott & Zollinger, Chtd., Pocatello, for respondent.

Frank Archer was stopped for speeding while operating a commercial vehicle in December 2005. The officer who stopped Archer noticed that Archer smelled like alcohol and Archer admitted to drinking. The officer conducted a breath test using an Alco-Sensor III portable breath testing unit, and the test showed Archer's blood alcohol concentration was above the legal limit for commercial vehicle drivers.

Archer requested a hearing before a hearing officer from the Idaho Transportation Department (ITD). At the hearing, Archer argued that his license should not be suspended because the officer who arrested him did not send a calibration record for the Alco-Sensor III machine to the ITD along with the results of Archer's breath test. The hearing officer suspended Archer's commercial driver's license. Archer appealed to the district court. The district court vacated the suspension of Archer's driver's license because it concluded that Archer had proven by a preponderance of the evidence that the breath test he received was not conducted in accordance with the methods proscribed by the Idaho State Police. The ITD appeals.

POCATELLO, TUESDAY, MARCH 11, 2008, AT 10:30 A.M.

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 32651

STATE OF IDAHO,)
)
Plaintiff-Respondent,)
)
v.)
)
SHANA VOSS PARKINSON, aka SHANA)
WHITMORE and SHANA RICHARDS,)
)
Defendant-Appellant.)
_____)

Appeal from the District Court of the Seventh Judicial District, State of Idaho, Jefferson County. Hon. Gregory S. Anderson, District Judge.

R. James Archibald, Idaho Falls, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

In the early morning hours of February 1, 2004, Shana Voss Parkinson stabbed her ex-husband and his fiancée to death at his Jefferson County residence. Shortly after the murders occurred, authorities received a 911 call from Parkinson, and an officer found her sitting in her car outside a convenience store, barefooted and covered in blood. She claimed to not know what had happened, but significant physical evidence implicated her as having killed the couple.

Parkinson was charged with burglary, Idaho Code § 18-1401, two counts of first-degree murder, I.C. §§ 18-4001, 4002, 4003, and two counts of using a deadly weapon in the commission of a crime, I.C. § 19-2520. She was found guilty of all charges. Parkinson now appeals, arguing the court erred in denying, in part, her motion for change of venue due to pretrial publicity, denying her motion for a judgment of acquittal due to the information not alleging a date on which the murders occurred, questioning prospective jurors in a “screening” process prior to voir dire without placing them under oath, and in admitting certain expert testimony. She also contends the prosecutor committed misconduct in his closing statements.

POCATELLO, TUESDAY, MARCH 11, 2008, AT 1:30 P.M.

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 34086

STATE OF IDAHO,)
)
Plaintiff-Respondent,)
)
v.)
)
BENJAMIN SAVAGE,)
)
Defendant-Appellant.)
)

Appeal from the District Court of the Seventh Judicial District, State of Idaho, Custer County. Hon. James C. Herndon, District Judge. Hon. Charles L. Roos, Magistrate.

Blaser, Sorensen & Oleson, Blackfoot, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Rebekah A. Cudé, Deputy Attorney General, Boise, for respondent.

On April 18, 2006, a magistrate issued a protective order that restrained Benjamin Savage from going within 300 feet of the residence or workplace of a protected person until July 17, 2006. The protection order also prohibited Savage from possessing firearms. The police located Savage while he was driving a pickup on June 3, 2006, and served him with the protective order. Based on evidence discovered while serving Savage with the order, the officers also cited Savage for unlawful transportation of an alcoholic beverage.

Savage filed a motion to suppress the evidence obtained during the stop, which the magistrate denied. Savage filed a motion in the district court requesting permission to appeal the magistrate's denial of his motion to suppress, which the district court granted. The district court affirmed the magistrate's order denying Savage's motion to suppress and remanded the case. On remand to the magistrate, Savage entered a conditional guilty plea to unlawful transportation of an alcoholic beverage, reserving the right to appeal the order denying his motion to suppress. The magistrate imposed a fine of \$100. Savage appeals, again challenging the magistrate's order denying his motion to suppress.